

later as a source of sustenance for the Pilgrims;

Whereas during the early days of this country's history, when wooden ships sailed the seven seas, American vessels carried cranberries across the globe in wooden barrels knowing that eating this fruit help prevent scurvy, long before medical science discovered cranberries are a valuable source of vitamin C;

Whereas cranberries are now one of three native fruits still commercially produced today;

Whereas cranberry growers have shown their commitment to environmental stewardship by using integrated pest management to reduce pesticide use, practicing water conservation and preserving, protecting, and creating wetlands and open space which provide habitat for a diversity of wildlife, including many threatened or endangered species;

Whereas the annual production of cranberries has increased from 300,000 pounds a century ago to over 600,000,000 pounds today as consumers worldwide discover the many uses of this healthy fruit;

Whereas multiple clinical trials and related scientific studies have conclusively documented the unique ability of the cranberry to help maintain urinary tract health, due to the variety and level of its natural components;

Whereas the cranberry has long played an important role in American food, culture, and tradition, including the celebration of our Thanksgiving;

Therefore in proclaiming October "National Cranberry Month" I urge all citizens of the United States of America to join with our cranberry farmers to recognize and celebrate the cranberry, a healthy, colorful, and truly American fruit.

INTRODUCTION OF STOP ENABLERS OF FRAUD ACT

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 2002

Mr. MARKEY. Mr. Speaker, I am pleased to introduce the Stop Enablers of Fraud Act, which eliminates the exemption that shields accounting firms, investment banks, and other professional services firms from liability in private suits when they assist their clients commit securities fraud. This exemption was created as a result of the Supreme Court's 1994 decision in *Central Bank of Denver v. First Interstate Bank of Denver*, which precluded private parties from recovering damages from those who assist in the perpetration of fraudulent activities. Congressional action reaffirmed the authority of the Securities and Exchange Commission (SEC) to bring cases against aiders and abettors of securities fraud, but the SEC's limited resources and heavy workload have prevented it from pursuing every meritorious case against firms that help their clients engage in fraud.

Recent results of the Commission's pursuit of aiders and abettors have been disappointing for investors defrauded with the assistance of professional services firms that possess the specialized expertise required to construct elaborate securities schemes. According to the SEC, between August 2001 and May 2002, the Commission filed or instituted 40 initial actions for aiding and abetting violations of the federal securities laws. For the 22

matters that had been concluded as of May 2002, 4 included orders of disgorgement of ill-gotten gains. The total amount ordered disgorged by the SEC in the four actions was a mere \$321,368.87. With an estimated \$3 billion in losses suffered by state pension systems as a result of the Enron debacle alone and investors nationwide facing unlikely prospects of recovery due to the insolvency of the alleged primary violator, the bar against private parties seeking damages from the aiders and abettors of fraud should be lifted. Disgorgement of individual profits can never amount to more than a trifle compared to investors' losses on the open market. Disgorgement applies only to forfeiture of the ill-gotten profits reaped from the fraud, which typically represents only a fraction of what investors actually lost from the securities scheme. The ability to recover damages from aiders and abettors in private securities suits would compensate investors for their actual losses, not merely force defendants to surrender profits from their securities violations. As a result of *Central Bank*, defrauded investors are short-changed, forced to settle for a fraction of their actual losses, if they are able to recover any funds at all.

The Stop Enablers of Fraud Act responds to the series of corporate scandals that have illuminated the integral, albeit supporting, role that professional services firms sometimes play in the design, implementation and validation of fraudulent activities conducted by their clients. In their responses to the consolidated complaint in the pending Enron litigation, professional services firms frequently have cited the *Central Bank* precedent as they seek to have the charges against them dismissed, arguing that aiders and abettors are immune from liability for fraud alleged in private suits. For example, Merrill Lynch's motion to dismiss states, in relevant part:

[I]n recent years two developments have effected tectonic shifts in the law governing federal securities fraud actions, especially those pled not against the issuer of the securities in question but rather against the peripheral professional organizations who provided services to the issuer. Those two developments were (a) the enactment of the Private Litigation Securities Reform Act (sic) . . . and (b) the Supreme Court's decision in *Central Bank of Denver N.A. v. First Interstate Bank of Denver* . . . The Section 10(b) claims alleged against Merrill Lynch must be dismissed . . . [because] plaintiffs' principal theory of liability against Merrill Lynch . . . is precluded by the Supreme Court's holding in *Central Bank*.

While it remains to be seen whether such arguments will prove decisive in the Enron case, *Central Bank* nevertheless poses a significant risk to investors who, defrauded by a firm that subsequently became insolvent, may be deprived of recovering losses from the remaining entities that helped to enable the fraud to occur in the first place. It is clear from last week's Justice Department criminal complaint against Enron's former Chief Financial Officer Andrew Fastow that Mr. Fastow did not act alone. The Justice Department's complaint states "Enron at least once enlisted a major financial institution to assist in its financial statement manipulation." During Senate hearings held in July, the financial institution was identified as Merrill Lynch.

The Stop Enablers of Fraud Act overturns the Supreme Court's decision in *Central Bank*

and restores the ability of individuals to bring private suits against those who aid and abet a securities fraud. For decades prior to the Court's decision, firms that assisted their clients to perpetrate fraud had been held accountable for their role in fraudulent activities. Individuals who have been defrauded as a result of the machinations of Mr. Fastow and those who aided and abetting Enron's frauds should not be blocked from pursuing private suits to recover their losses. Empowering individuals to hold accountable the enablers of securities fraud will compel accountants, securities firms, and attorneys to consider the potential litigation risks before they help their clients commit fraud. The exposure of aiders and abettors to liability in private suits is in the best interest of investors and the marketplace. The Stop Enablers of Fraud Act also serves as an important deterrent effect for those who, tempted by the pursuit of profit, may reconsider becoming an accomplice to the type of securities frauds that have so damaged the financial health of Americans across the country.

CELEBRATING TAIWAN'S
NATIONAL DAY: OCTOBER 10, 2002

HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 2002

Mr. LANGEVIN. Mr. Speaker, I rise today to extend my best wishes and congratulations to the leaders and citizens of Taiwan as they celebrate their 91st National Day.

Despite our lack of formal relations with the Republic of China on Taiwan, we enjoy a flourishing relationship. Speaking in New York, Secretary of State Colin Powell recently called Taiwan a "success story" and noted that Taiwan has become a resilient economy, a vibrant democracy and a generous contributor to the international community.

Indeed, Taiwan's economy has grown tremendously in recent decades. Taiwan is the United States' eighth-largest trading partner and seventh-largest export market. Our exports to Taiwan in 2001 totaled \$18.2 billion. Taiwan's importance as a world economy was evidenced by its accession to the World Trade Organization earlier this year, the culmination of twelve years of collaborative efforts with the U.S.

Over the past several decades, Taiwan has also become a successful model of rapid political reform. Taiwan today is home to more than ninety political parties, and virtually every political office is hotly contested through free and fair elections. Just two years ago, Mr. Chen Shui-bian, a former political dissident, was elected the tenth president of the Republic of China.

Taiwan is making significant contributions to the international community, and I know that our bilateral relations will only grow stronger in the coming years. Mr. Speaker, I know you and all our colleagues join me in sending congratulations to the people of Taiwan on this special day.